

INTERNAL REVENUE SERVICE
District Director
2 Cupania Circle
Monterey Park, CA 91755-7431

DEPARTMENT OF THE TREASURY
Western Key District

CERTIFIED MAIL

Date:

Employer Identification Number:

Case Number:

Contact Person:

Contact Telephone Number:

Refer Reply To:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c) (3) of the Internal Revenue Code (Code). Based on the information submitted, we have concluded that you do not qualify for exemption under that Code section.

FACTS:

The information submitted discloses that you were incorporated [REDACTED]. Your articles of incorporation state, in pertinent part, as follows:

"the specific purposes for which this corporation is organized are to assist riders who have been injured while riding horses or ponies while preparing for, or during equestrian competition of any kind. Assistance can also be provided for the purchase, rental or lease of equipment used to train, transport or rehabilitate said injured riders.

The organization will also fund and assist in education with regard to safe and proper riding techniques and prevention of injury programs for present or future riders. This will include, but not be limited to assistance for equestrian teams, course owners and jumping and dressage specialists in obtaining state of the art equipment and training materials to prevent equestrian accidents and mitigate the potential harm to riders."

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Per your application, Form 1023, your primary activity is to provide assistance to your members who are injured while riding horses during the preparation for or participation in any kind of equestrian competition. To become a member, an individual must be a member of the [REDACTED], the [REDACTED], the [REDACTED], the [REDACTED], or the [REDACTED] and pay annual dues of \$ [REDACTED] (individual) or \$ [REDACTED] (family). Currently, you have no members. You estimate that approximately [REDACTED] new members will join on an annual basis. To receive assistance, an injured rider is required to have a doctor complete an application form. Once completed, the form is submitted to a Claims Committee which is made up of individuals chosen by your Board of Directors. According to one of your brochures, the "injured riders fund" provides "supplemental insurance" to be used to cover the costs of such things as wheelchair ramps, therapy equipment, child care, and transportation to doctors' appointments or therapy sessions. Your financial support will come from membership dues and donations. You will solicit for financial support at various equestrian events as well as through the mails. In addition, you plan to make appeals to the boards of various equestrian and philanthropic organizations.

ISSUE:

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Code?

LAW:

Section 501(c)(3) of the Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

..."(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h), and which does not participate in, or intervene in (including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations (Regs) provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in

that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regs provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regs provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the Regs defines "private shareholders or individuals" as an individual having a personal and private interest in the activity of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of an organization or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the Regs provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes relief of the poor, distressed and the underprivileged.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Human Engineering Institute, TC Memo 1978-145, affd (1980, CA6) 629 F2d 1160, 90-2 USTC section 9600, 46 AFTR 2d 80-5479; Kenner Williams v. Comm., (1963 CA7) 318 F2d 632 63-2 USTC Section 9519, 11 AFTR 2d 1596; and Gondia Corp., TC Memo 19182-422 all affirm that an organization is not organized and operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

In Puritan Church of America v. Comm., (1953, Dist Col) 209 F2d 3-6, 53-2 USTC section 9601, 45 AFTR 119 cert den (1954) 347 US 975, 9898 L ED 1115; the court found that an organization is disqualified if it serves a private rather than a public interest. It must therefore establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator of the organization or his family, shareholders, or persons controlled (directly or indirectly) by such private interest, and the accomplishment of the exempt purpose must not be accompanied by personal, private or selfish consideration.

In American Campaign Academy, (1989) 92 TC 1053 the court also found that nonincidental benefits conferred on disinterested persons may also serve private and non public interest and unrelated third parties (i.e., those not within the scope of private shareholders or individuals but merely members of the general public) aren't excluded from the class of private persons whose receipt of benefit would cause an organization to be operated for non exempt purposes.

Revenue Ruling 69-175, 1969-1 C.B.149, held that an organization formed by parents of pupils attending a private school that provided school bus transportation for its members' children served a private rather than a public interest. Revenue Ruling 69-175 states, in pertinent part, as follows:

"When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest."

Revenue Ruling 71-395, 1971-2 C.B.228, held that an organization formed by a group of artists for the purpose of exhibiting and selling their works served a private rather than a public interest. Revenue Ruling 71-395 states, in pertinent part, as follows:

"The cooperative gallery in this case is engaged in showing and selling only the works of its own members and is a vehicle for advancing their careers and promoting the sale of their work. It serves private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects."

ANALYSIS:

All of the preceding Code sections, Regulation sections, Revenue Rulings and Court cases describe the criteria under which an organization may be exempt under section 501(c)(3) of the Code. They also describe the basis for which organizations were denied exemption because of private benefit to members. Under section 501(c)(3) of the Code organizations who are not operated exclusively for one of the specified purposes of Code section 501(c)(3) or organizations whose sole purpose is providing private benefits to its members or individuals is not exempt under Code section 501(c)(3). Our analysis of your case indicates that you were formed

to provide assistance to members of your organization who are injured while training for or participating in equestrian events. You were formed and will operate as a cooperative or mutual benefit type of organization to benefit your members. Your criteria for selection of recipients of your assistance does not insure that such assistance furthers a charitable purpose. Funds are not given on an objective and non discriminatory basis and your assistance program is not open to the public but limited to members of this organization.

Because you have a substantial non-exempt purpose of assisting only your members who are injured you are operated primarily to serve the private interest of your members who participate in the sport of horseback riding rather than the public interest, you are not "operated exclusively" for an exempt purpose pursuant to sections 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(d)(1)(ii, of the regulations. By failing to meet the operational test for exemption, you are not exempt under section 501(c)(3) of the Code.

CONCLUSION:

To be considered for tax exempt status under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that Code section. Also, its activities must be restricted to those permitted a section 501(c)(3) organization. It is the position of the Internal Revenue Service based on the information submitted, that you are not entitled to exemption from Federal income tax as an organization described in Code section 501(c)(3), inasmuch as you are not organized and operated exclusively for any of the specified purposes within that Code section but are both organized and operated exclusively for the private benefit of your members. Contributions to you are not deductible under section 170 of the Code.

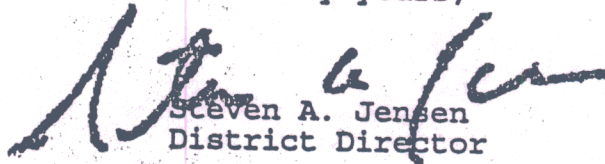
If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 6018. Please note the instructions for signing on the reverse side of the form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of the Regional Director of Appeals or, if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will

then become our final determination. Section 7428(b)(2) of the Internal Revenue code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,



Steven A. Jensen
District Director

Enclosures:
Form 6018
Publication 892

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